

Do Best Infoway Vs. Cce

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-24-2003

Reported in : (2004)(91)ECC625

Judge : N T C.N.B., P Chacko

Appellant : Do Best Infoway

Respondent : Cce

Judgement :

1. Appellant imported a consignment of 5900 pieces of educational video games of model GLK-2002 from M/s Apex Trading Well Company, Hong Kong and sought clearance of the goods under Bill of Entry No. 280 dated 11.6.2002. Appellant claimed assessment of the goods at the transacted value, 17 HK dollars equivalent to 109.38 per piece). Customs Authorities issued Show-cause Notice dated 18.7.2002 proposing to reject the transaction value on the ground that transaction value was much lower than the value of comparable imports through other Customs stations. The notice proposed to assess the goods at the rate of Rs. 173.61 per piece. It also proposed confiscation of the goods under Section 111(m) of the Customs Act, 1962 and imposition of penalty under Sections 112 and 117 of the Customs Act, 1962. The appellant filed reply to the Show-cause Notice explaining that the transaction value represented commercial value of the goods in question and that according to the Customs Valuation Rules, assessment of goods is to be carried out based on the transaction value. In order to support the transaction value, they also produced sale invoice of the Chinese

manufacturer who had sold the goods to the appellant's supplier at Hong Kong. The manufacturer's sale was at the rate of Hong Kong \$ 16.50 per piece. The appellant also explained that the present import was a part of large quantity of 23,000 pieces contracted and that the transaction value was a negotiated price. It was also explained that according to the terms of supply, only 85% of the stock would be of workable quantity and the remaining 15% can be defective. The appellant also submitted that similar goods had been cleared by them through Hyderabad Customs at the same price. The appellant further tried to distinguish the other imports on the ground of difference in model, difference of manufacturer, different quantity under sale etc. The Customs Commissioner passed the order impugned in the present appeal increasing the assessable value for the goods to Rs. 130.52 per piece, confiscating the goods (but allowing their redemption without any fine, "as the goods incurred considerable demurrage charge") and imposing a penalty of Rs. 50,000 on the appellant.

2. Appellants have contended in the present appeal that the entire proceedings were misconceived and contrary to specific legal provisions in the Customs Act and Customs Valuation Rules as well as the law laid down by the Apex Court in the case of Eicher Tractor Ltd., 2000 (72) ECC 673 (SC) : 2002 (122) ELT 321 (SC). It is the contention of the appellant that Rule 4 of the Valuation Rules mandates that goods should be assessed to customs duty at their transaction value/unless for valid reasons as contemplated in the Rules. At the time of hearing of the case, learned Counsel took us to the observation of the Supreme Court in its judgment in the case of Eicher Tractor Ltd. and emphasised that the present order has been passed in total violation of the dictum contained in that judgment. Learned Counsel has pointed out that another transaction at a different value is no ground for rejecting the transaction value of the goods under assessment. He also pointed out that present impugned order gave no reason for rejecting the transaction value, except that other transaction had been assessed at higher value. Learned Counsel also emphasised that since the sale price of the appellant's supplier at Hong Kong was higher than his purchase price from the Chinese manufacturer, there was no justification whatsoever to doubt that transaction value and to replace it by the value of another transaction for the purpose of assessment. The counsel also submitted that mere rejection of a

transaction value for assessment does not make the declaration of value made in the customs declaration a mis-declaration making the goods liable to confiscation under Section 111(m) and importer to penalty.

3. We have perused the record and have considered the submission made by both sides. The present import has taken place based on a contract dated 28th January 2002 between the appellant-importer and its supplier. Price is a negotiated price and is supported by the Chinese manufacturer sale price also. Further, similar goods are being imported at different price at different ports. It is well settled that goods are required to be assessed at the transaction value unless the transaction is tainted for the reasons mentioned in the Rules themselves. No such ground exists in the present case. The transaction values vary depending upon valid commercial reasons like quantity etc.

The law contemplates that each one of the commercial values is to be accepted for assessment. The impugned order has only an untenable ground that another transaction has taken place at higher price. The difference between transaction price and the comparable price adopted by the Commissioner i.e. (Rs. 109.38 to 130.52} is also not so huge that it can be alleged that transaction value is patently non-commercial. In these circumstances, the rejection of the declared value for assessment and confiscation and imposition of penalty cannot be sustained. Impugned order is, therefore, set side and the appeal is allowed.

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